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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BURT BOBBY DANIELS,

11 Plaintiff,

12 v.

13 LIN-MARIE NACHT, *et al.*,

14 Defendants.

CASE NO. C09-1184-RSL-JPD

REPORT AND RECOMMENDATION

15 Plaintiff Burt Bobby Daniels has presented to this Court for filing a civil rights complaint
16 under 42 U.S.C. § 1983. He alleges therein that defendants Lin-Marie Nacht and Bruce Shamulka,
17 both of whom are attorneys appointed to represent plaintiff in proceedings before the King County
18 Superior Court, have engaged in unethical conduct and have denied plaintiff his right to effective
19 assistance of counsel. Plaintiff has also presented to this Court an application to proceed with this
20 action *in forma pauperis*. Plaintiff seeks to be compensated for the alleged unlawful actions of
21 defendants.

22 In order to sustain a cause of action under 42 U.S.C. § 1983, a plaintiff must assert that (a)
23 the defendant acted under color of state law, and (b) the defendant's conduct deprived the plaintiff of
24 a constitutional right. *Rinker v. Napa County*, 831 F.2d 829, 831 (9th Cir. 1987). Neither private

1 attorneys nor public defenders are considered state actors for purposes of bringing suit under § 1983.
2 *See Polk County v. Dodson*, 454 U.S. 312 (1981)(a public defender does not act under color of state
3 law when performing a lawyer's traditional functions as counsel to a defendant in a criminal
4 proceeding). As plaintiff makes clear in his complaint that the named defendants have been
5 appointed to represent him in ongoing state court proceedings, and as plaintiff's claims go to the
6 quality of that representation, plaintiff may not maintain an action against defendants Nacht and
7 Shamulka under § 1983.

8 Accordingly, this Court recommends that this action be dismissed and that plaintiff's
9 application to proceed *in forma pauperis* be denied as moot. A proposed Order accompanies this
10 Report and Recommendation.

11 DATED this 23rd day of September, 2009.

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14 JAMES P. DONOHUE
United States Magistrate Judge